



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 3, 1998

Mr. Helmut (Hal) Talton
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 East 11th Street
Austin, Texas 78701-2483

OR98-2559

Dear Mr. Talton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119539.

The Texas Department of Transportation (the "department") received a request for information relating to the proposed taking of a certain property. You claim that the requested information is excepted from required public disclosure under section 552.103 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of documents.¹

To be excepted under section 552.103, the department must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e); Open Records Decision No. 551 at 4 (1990). You state that the Texas Transportation Commission passed a Minute Order which directs the department to request the Office of the Attorney General to file eminent domain proceedings against those who have an interest in the properties at issue, including the property that is the subject of the open records request. You further explain that the department is forwarding the

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

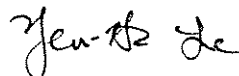
request for commencement of eminent domain proceedings to the Attorney General as directed by the Minute Order. We conclude that you have met your burden under both prongs of section 552.103. Accordingly, you may withhold the requested information under section 552.103(a) of the Government Code.

However, if the opposing party in litigation has seen or had access to the requested information, there is no justification for withholding the information from the requestor pursuant to section 552.103(a). *See* Open Records Decision Nos. 349 (1982), 320 (1982). Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. ORD 349, ORD 320. You state that the submitted information includes a survey that is also an exhibit to the Minute Order. If the survey was released to the public along with the Minute Order, then you may not withhold the survey under section 552.103. Open Records Decision Nos. 518 (1989) (voluntary release to any member of the public makes information subject to further disclosure), 436 (1986); *see also* Open Records Decision Nos. 551 at 2-3 (1990) (laws or ordinances are open records), 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records").

Lastly, we also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Thus, section 552.103(a) is not applicable once the eminent domain action has concluded or if the property in dispute has otherwise been obtained by the department. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

Ref.: ID# 119539

Enclosures: Submitted documents

cc: Mr. Eddie Vassallo
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(w/o enclosures)